U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33944907

Date: NOV. 14, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a business and logistics specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner then submitted a combined motion to reopen and motion to reconsider. The Director again concluded that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and

Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. *See id.* at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the proposed endeavor as a plan "to work in the United States as a Specialist in International Business and Logistics in the exports/imports industry for international trade." The Petitioner elaborated that he "plan[s] to work in a large logistics company where my experience in Colombia along with my language skills in Spanish and English would be especially beneficial." He also generally stated that he "will help develop and implement new logistics processes that lower costs and port charges while improving the profit and lead times of the international business."

The Director concluded the proposed endeavor has substantial merit as required, in part, by the first *Dhanasar* prong. *See id.* at 889-90. The Director acknowledged that the record contains "documents that discuss the importance of the industry." However, the Director explained that those documents "are not specific to the self-petitioner. Therefore, it is not apparent how these articles are relevant in determining eligibility to [the national interest aspect of the first *Dhanasar*] prong." The Director also acknowledged that the Petitioner submitted "recommendation letters [that] recognize and praise the [Petitioner's] ability in the field." However, the Director observed that the Petitioner "has not established that the proposed endeavor . . . has implications beyond a company, (or any prospective employers), business partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of the endeavor," as required by the first *Dhanasar* prong. *See id.* Although the Director denied the Form I-140, Immigrant Petition for Alien Workers, the Director concluded that the record satisfied the second *Dhanasar* prong; however, the Director also concluded that the record

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

does not satisfy the third *Dhanasar* prong. The Director reserved the issue of whether the record satisfies the third *Dhanasar* prong in the combined motion to reopen and motion to reconsider decision. *See id.* at 888-91 for elaboration on these three prongs.

On appeal, the Petitioner again references his "background and experience," a generalized "national shortage of International Business Experts," and "the national significance of job creation, logistic and economic impact attributed to his proposed endeavor." The Petitioner also submits an employment verification letter, and he asserts he "plays a crucial role in addressing supply chain issues, significantly impacting the national interest of the United States through the management of logistics for construction and agricultural machinery."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references—throughout the record but specifically on appeal—to his "background and experience" are material to the second *Dhanasar* prong, whether an individual is well-positioned to advance a proposed endeavor. *See id.* However, an individual's background and experience are immaterial to determining whether the potential prospective impact of the specific endeavor that the individual proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* Because the Petitioner's background and experience are immaterial to the issue of whether the specific endeavor he proposes to undertake may have national importance, we need not address them further.

We acknowledge that, on appeal, the Petitioner submits an employment verification letter dated April 2024. However, the extent of the one-paragraph employment verification letter confirms that the entity has employed the Petitioner since November 21, 2022, it states his job title, and it confirms he works 40 hours per week, compensated a certain amount monthly. We note that, in contrast to the Petitioner's assertions on appeal, the one-paragraph employment verification letter does not address whether he "plays a crucial role in addressing supply chain issues, significantly impacting the national interest of the United States through the management of logistics for construction and agricultural machinery." Neither the employment verification letter nor the remainder of the record establish how the Petitioner's work "holding the Title of Logistic Manager" has national or even global implications within the field of logistics, construction, agriculture, or any other field, such as those resulting from certain improved manufacturing processes or medical advances, significant potential to employ U.S. workers, or other substantial positive economic effects that may indicate national importance. *See id.*

The record, considered in its entirety, establishes that the Petitioner's proposed endeavor of working "in a large logistics company" as a business and logistics specialist will benefit his employer(s), their business partners, and their clients and customers. However, the record does not establish how the

potential prospective impact of the proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong. For example, the Petitioner asserts he "will help develop and implement new logistics processes that lower costs and port charges while improving the profit and lead times of the international business." However, the implications of that appear to be confined to the international business that employs him, its business partners, and its clients and customers, rather than posing national or even global implications within the field of logistics, construction, agriculture, or any other field, such as those resulting from certain manufacturing processes or medical advances. *See id.* We note that, by lowering the employer's costs and port charges, the proposed endeavor appears to have negative financial consequences for ports and other entities by lowering their revenue at the same rate the proposed endeavor lowers the employer's costs and port charges. Thus, the benefits to the Petitioner's employer(s), their business partners, and their clients and customers appear to cause offsetting negative economic effects for other entities.

As another example, the Petitioner generally references on appeal a "national shortage of International Business Experts." However, the record does not establish how the proposed endeavor of the Petitioner working as one "Logistic Manager" for—presumably—one employer at a time will affect the alleged "national shortage of International Business Experts" at a level indicative of national importance.

As a further example, the Petitioner generally references "the national significance of job creation" on appeal. However, the record does not establish how his logistics work for his employer will create jobs, the number of jobs his logistics work will create, the extent to which his logistics work as opposed to other factors within the employer's operation caused those jobs to be created, and other details that could support the conclusion that the proposed endeavor has significant potential to employ U.S. workers. *See id.* Moreover, the record does not reconcile whether there would be job losses at the entities whose revenues would be lowered at the rate the proposed endeavor would lower the Petitioner's employer's costs and port charges, as noted above, potentially resulting in a net loss of overall U.S. jobs.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.